

TECHNICAL MEMORANDUM

DATE: October 23, 2008
TO: Erika Conkling and Renton Staff
FROM: David Sherrard, Parametrix
SUBJECT: Renton Shoreline Master Program
Regulatory Approach Options – Code Overview

This Technical Memorandum addresses issues relating to Comprehensive Plan and Development Regulations format and general approach.

This is one of five Technical Memoranda that address the framework of decisions needed to be made to implement the 2003 Shoreline Guidelines WAC 173-26. Other Technical Memoranda prepared to address other issues include:

- Regulatory Approach Options – Specific issues
- Opportunities and constraints for maintaining and enhancing ecological functions
- Public access opportunities
- Market Demand for Water Dependent Uses

Issues addressed in this memorandum include:

1. Structure of the Shoreline Master Program
2. Provisions for Shorelines of Statewide Significance
3. Shoreline geographic designations
4. Critical Areas
5. Mitigation of Cumulative Impacts
6. Provisions for existing development

More detailed discussion of each of these issues is provided below.

1. Relationship of the Shoreline Master Program to the Comprehensive Plan and Development Regulations

Existing Code

Policies and regulations that govern the land under the jurisdiction of the state Shoreline Management Act (SMA) currently are found in four places:

- a) A separate “Shoreline Master Program” last amended in 1998. This document is separate from the city’s Comprehensive Plan document (although legally part of the Comprehensive Plan by GMA definition);

b) Comprehensive Plan Policies

- i) Comprehensive Plan Land Use Element Subsections -on: annexations, resource land, and residential policies.
- ii) Comprehensive Plan Community Design Element Subsections on natural areas and site planning.
- iii) Comprehensive Plan Parks, Recreation, Open Space, and Trails Element Subsection on new park services.
- iv) Comprehensive Plan Transportation Element Subsection on the Airport.
- v) Comprehensive Plan Utility Element Subsection on surface water.

These policies are not technically part of the Shoreline Master Program and have not been approved by the State Department of Ecology. Primarily their purpose is to acknowledge in a very general way that the shoreline is a special resource that needs protection.

- c) Regulations found in the Development Code in Chapter 4-3-090 Shoreline Master Program Regulations. This is a codification of Chapters 5 and 6 of the 1998 Shoreline Master Program.
- d) Regulations found in the Development Code in other Chapters governing a variety of uses and standards such as landscaping parking and building design guidelines.

SMA Guidelines

The 2003 Shoreline Guidelines allow:

- a) Adoption of a separate SMP as a stand alone document containing policies and regulations
- b) Adoption as a package of separate policies and regulations in various sections of the Comprehensive Plan and Development Code. The most significant requirement of this approach is the ability to clearly designate shoreline regulations and procedures from other non-shoreline provisions and clear provisions for assuring Ecology review and approval of all amendments.

Options

- a) Keep the existing system – This approach is not recommended due to the complexity and the potential for confusion and overlap.
- b) Provide one self-contained Shoreline Master Program– This approach is not recommended because of the many cases where shoreline jurisdiction cuts across properties and also because of the desirability of integrating shoreline policies and regulations into an integrated vision and integrated set of regulations.
- c) Provide the entire policy framework in the Comprehensive Plan and the entire set of regulations in the Development Code –

Recommendation: Option (c) is the recommended approach. There would be a separate chapter in the Comprehensive Plan that would contain all policies with all regulations in the Development Code

2. Provisions for Shorelines of Statewide Significance

Existing Code:

Section 3.02 of the Shoreline Master Program and Section 4-3-090-D of the Development Code contains a recitation of the statutory priorities for Shorelines of Statewide Significance (SSWS) and identified Lake Washington and the Green River as qualifying for this designation.

There is no difference in regulations for SSWS and other shorelines in the code.

SMA Guidelines: Shorelines of Statewide Significance are defined in the statute (RCW 90.58.020). Only Lake Washington, as a lake with a surface area of one thousand acres or more, qualifies as a SSWS in Renton:

- a) The following specific direction is provided in the statute Specific direction for implementing policies for preference to uses in the following order:
 - (1) Recognize and protect the statewide interest over local interest;
 - (2) Preserve the natural character of the shoreline;
 - (3) Result in long term over short term benefit;
 - (4) Protect the resources and ecology of the shoreline;
 - (5) Increase public access to publicly owned areas of the shorelines;
 - (6) Increase recreational opportunities for the public in the shoreline;
 - (7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary."
- d) The SMA calls for a higher level of effort in implementing its objectives on shorelines of statewide significance. RCW 90.58.090(5) states: "The department shall approve those segments of the master program relating to shorelines of statewide significance only after determining the program provides the optimum implementation of the policy of this chapter to satisfy the statewide interest." WAC 173-26-251(2) further states that optimum implementation involves special emphasis on statewide objectives and consultation with state agencies. The State's interests may vary, depending upon the geographic region, type of shoreline, and local conditions. Optimum implementation may involve ensuring that other comprehensive planning policies and regulations support Shoreline Management Act objectives. Because shoreline ecological resources are linked to other environments, implementation of ecological objectives requires effective management of whole ecosystems. Optimum implementation places a greater imperative on identifying, understanding, and managing ecosystem-wide processes and ecological functions that sustain resources of statewide importance.
- e) For shorelines of statewide significance master program provisions shall establish development standards that ensure the long-term protection of ecological resources of statewide importance. Standards shall consider incremental and cumulative impacts of permitted development and include provisions to insure no net loss of shoreline ecosystems and ecosystem-wide processes. (WAC 173-26-251(3)(d)(i)) [Emphasis added]

Options: The following options

- f) The SMP can employ a separate overlay of additional criteria for Shorelines of Statewide Significance.

- g) Separate regulations can be developed for areas defined as Shorelines of Statewide significance that recognize and incorporate the additional criteria for those areas.

Recommendation: As outlined below under “Shoreline Geographic Environment Designations,” provide a separate set of districts specifically for Lake Washington. This will both recognize the different regulatory climate and the difference in ecological functions that results from the lake environment.

3. Shoreline Geographic Environment Designations

Existing Code: The existing SMP provides three geographic overlays that apply in addition to zoning requirements.

- a) Urban – This is the designation for the majority of the shoreline
- b) Conservancy – this designation is employed in the following areas:
 - i) May Creek east of I-405
 - ii) Cedar River south bank beginning 2,500 feet east of I-405
 - iii) Springbrook Creek from SW 27th Street on the north to SW 31st Street on the south, (abutting city owned wetlands) and in the vicinity of SW 38th Street (abutting the city’s wetlands mitigation bank)
- c) Natural – This designation is used only for that portion of the north bank of the Black River lying west of its confluence with Springbrook Creek

SMP Guidelines

WAC 173-26-211(4)(c)(i) provides that “Local governments may establish a different designation system or may retain their current environment designations, provided it is consistent with the purposes and policies of this section and WAC 173-26-211(5).

Environment Designations in WAC 173-26-211(5) are envisioned as overlays similar to the existing system. Those that can apply to the city include:

- a) High Intensity
- b) Residential
- c) Urban Conservancy
- d) Natural

The Rural conservancy" environment is not applicable in an urban area such as Renton.

Shoreline environments must contain:

- a) A statement of purpose that describes the shoreline management objectives of the designation in a manner that distinguishes it from other designations.
- b) Classification criteria that provide the basis for classifying or reclassifying a specific shoreline area with an environment designation.
- c) Management policies that are in sufficient detail to assist in the interpretation of the environment designation regulations and to evaluate consistency with the local comprehensive plan.
- d) Regulations that address:
 - i) Types of shoreline uses permitted, conditionally permitted, and prohibited;

- ii) Building or structure height and bulk limits, setbacks, maximum density or minimum frontage requirements, and site development standards; and
- iii) Other topics not covered in general use regulations that are necessary to assure implementation of the purpose of the environment designation.

Options

Five options are proposed for consideration for Renton:

- a) Retain the existing city overlay system. This approach is probably not consistent with the new Shoreline Guidelines. The single “urban” designation also does not recognize the distinction between areas provided in Renton’s zoning.
- b) Use the overlay classifications in the new Shoreline Guidelines. These are essentially the same as the existing, except for the “residential” environment.
 - i) The advantages of this approach are that the classifications will be generally understood as being similar to others used throughout the state
 - ii) The disadvantages of this approach are that the classifications presume similar ecological conditions and development opportunities in areas that are very different, for example the Cedar River and Springbrook Creek are substantially different in the ecological functions provided and appropriate regulations.
- c) Develop new overlay classifications that more closely parallel the city’s zoning.

The advantages of this approach are:

- i) consistency between shoreline regulations and zoning regulations
- ii) Simplicity in administration

The disadvantages of this approach are that it assumes that ecological conditions and development opportunities are similar in areas that may be very different, for example the Cedar River and Springbrook Creek.

- d) Develop overlay classifications that are based on specific shoreline reaches and recognize the specific characteristics of each area. For example, separate buffers would be placed on the Cedar River between Logan Ave. N and I-405 that recognize the urbanized character of the area that would be different from other reaches on the Cedar River and different from those on Springbrook Creek.
- e) Develop classifications that are not overlays and provide a single zoning category for shoreline properties. Such shoreline districts would parallel the city’s zoning classifications. This approach would provide shoreline designations that parallel city zoning categories.

The advantages of this approach are:

- i) consistency between shoreline regulations and zoning regulations
- ii) Simplicity in administration

The disadvantages of this approach are:

- i) Shoreline regulations are generally more restrictive in the range of use allowed, especially with the hierarchy of preference for
 - A water dependent uses
 - Water-related uses

- Water enjoyment uses
 - Non-water-oriented uses
- ii) Because of the difference between shoreline and upland provisions, an individual property may be split between two zoning districts

Recommendation: Use a combination of (c), (d), and (e).

- a) Use a single shoreline zoning classification (option (e) for those properties that are entirely within shoreline jurisdiction, or where shoreline values predominate over the entire parcel. This would eliminate the confusion between having two sets of rules and would make administration clearer and simpler.

We recommend applying this single shoreline zoning district to areas of existing single family development along Lake Washington (including the areas outside the city limits in the planning area) and on the portion of the Cedar River east of I-405 (This single-family development south of the Cedar River between Logan Avenue and Buchannon Ave. would be treated as an overlay district as described below.)

- b) Develop a new reach-based system that applies to properties that include both shoreline and upland areas or where broader city goals in the Comprehensive plan provide the primary guidance. This would continue the current administration of city zoning with an overlay that would provide an additional layer of review for the portions of a site near the shoreline.

We recommend the following overlay classifications with additional reach-based specifications to recognize existing ecological functions. The overlays would parallel the city's zoning districts. Separate designations for Lake Washington would also allow incorporation of specific required provisions to those "Shorelines of Statewide Significance" that would not apply to other "Shorelines of the State." :

- i) Lake Washington/Commercial, Office, Residential – to be applied to the COR zoned portion of Lake Washington at Quendall Terminals. A decision will need to be made whether to extend this overlay to the Barbee Mill subdivision or recognize that the single family character is permanent and apply the shoreline residential zoning district.
- ii) Lake Washington/Urban Center – to be applied to the area zoned UC at the north end of Lake Washington and the Lake Washington frontage of the Municipal Airport.
- iii) Lake Washington/Urban Conservancy – to be applied to Gene Coulon Park and some state aquatic lands on the south side of the lake as a parallel designation
- iv) Cedar River/High Intensity
 - (1) Reach 1 – to be applied from the mouth to Logan Street, except the Cedar River Trail Park on the east side of the river
 - (2) Cedar River/High Intensity Reach 2 – to be applied from Logan Street to I-405
 - (3) Cedar River/High Intensity Reach 3 to be applied on the north side of the river from the east side of the Cedar River Park to the east end of the COR zoning
- v) Cedar River/Urban Conservancy
 - (1) Reach 1 – to be applied to the Cedar River Trail Park on the east side of the river from the mouth to Logan Ave. N.

- (2) Cedar River/Urban Conservancy Reach 3 – to be applied to all public lands on the Cedar River east of I-405, including the Cedar River Park and Maplewood Golf Course, Ron Regis Park and the Cedar River Natural Area
- vi) Black River/High Intensity Reach 1 – City limits to pumping station
- vii) Black River/Natural or Urban Conservancy Reach 2– pumping station to S 143rd Street/Oakesdale Ave SW Either “Natural” or “Urban Conservancy” may be applied to portions of the area currently designated “Natural” on the Black River. The current SMA Guidelines have a more stringent definition of the Natural environment. Some areas currently designated “Natural” may be more appropriately designated “Urban Conservancy”
- viii) Springbrook Creek/High Intensity
 - (1) Reach 1 – S 143rd Street/Oakesdale Ave SW to 80th Ave S/Oakdale Ave SW (south of I-405) This includes the reach bounded on the west by the KC-Metro Sewage Treatment Facility and on the east by Oakesdale Ave SW and extends to where Oakesdale Ave re-crosses the river north of I-405
 - (2) Reach 2 – 80th Ave S/Oakdale Ave SW (south of I-405) to city limits. This would include those portions of Springbrook Creek not in wetland mitigation areas. Additional sub-reaches may be designated
- ix) Springbrook Creek/Urban Conservancy – 80th Ave S/Oakdale Ave SW (south of I-405) to city limits includes those portions of Springbrook Creek within wetland mitigation areas. Additional sub-reaches may be designated if regulations would differ substantially.
- x) May Creek/Urban Conservancy
 - (1) Reach 1 - from area beyond the Lake Washington shoreline of statewide significance jurisdiction to Lake Washington Blvd. Within the Barbee Mill subdivision, the area beyond the open space parcel would be placed in a parallel shoreline residential zoning district
 - (2) Reach 2 – between Lake Washington Blvd. and I-405
 - (3) Reach 3 – east of I-405
- xi) Green River/High Intensity Reach – all shorelines related to the Green River in Renton are separated from the river by the BNSF railroad and have very limited ecological functions in relation to the river.

4. Critical Areas

Existing Code: Renton’s critical area regulations were amended in 2005 by Ordinance No. 5136 and included amendment of provisions within the shoreline. The provisions within the shoreline are not effective until State Department of Ecology approval. City staff is still discussing the desired revisions with Ecology. It is assumed that the revised regulations will provide the basis of critical area regulations within the shoreline. The discussion below presumes that these code amendments will be accepted by Ecology.

The regulations in the SMP address aquatic related “fish and wildlife habitat conservation areas.” There is no mention in the SMP of other critical areas, which presumably continue to be governed by general provisions for critical areas in the Development Code.

An additional complication is a recent Washington Supreme Court decision in which they determined that Critical Area regulations within Shoreline Management Act (SMA) jurisdiction can only be adopted through Shoreline Master Program update. The decision is not yet effective because Ecology has filed for reconsideration. It could be weeks before the court makes a decision on the reconsideration. However, reversal of decisions on reconsideration is very rare. This decision, however is unlikely to change the approach the city has taken for critical areas, other than fish habitat. Formal adoption of regulations other than those for aquatic habitat is the most likely means to comply.

The regulations for aquatic habitat areas incorporated in the SMP by Ordinance No. 5136 are “classification” based. They use a modified version of the Department of Natural Resources stream classification system for Forest Practice regulations. This classification is based almost entirely on whether fish are present, plus whether with Shoreline Management Act jurisdiction.

The regulations make provision for the wide variety of lake and river environment conditions by a rather complex set of “what if” type specifications conditions that direct one to different regulations depending on factors such as the extent of native vegetation or vegetated cover.

SMA Guidelines

Critical areas are defined as including the following areas and ecosystems [RCW 36.70A.030(5)]:

- a) Wetlands;
- b) Areas with a critical recharging effect on aquifers used for potable water;
- c) Fish and wildlife habitat conservation areas;
- d) Frequently flooded areas; and
- e) Geologically hazardous areas.

The 2003 Shoreline Guidelines in WAC 173-26-221(2) provide similar standards to those that apply to critical areas in non shoreline areas found in WAC 365-190-080. Specific requirements in shorelines include:

- a) Provide a level of protection to critical areas within the shoreline area that is at least equal to that provided by the local government's critical area regulations adopted pursuant to the Growth Management Act for comparable areas other than shorelines;
- b) Are consistent with the specific provisions of the SMA Guidelines for flood hazard reduction;
- c) Buffers for critical areas, within the shorelines may be included in the SMP, even if they extend outside of normal shoreline jurisdiction;
- d) Critical area regulations must be developed using scientific and technical information developed in the Inventory/Characterization as described in WAC 173-26-201 (2)(a).
- e) The *planning* objectives of shoreline management provisions for critical areas are be the protection of existing ecological functions and ecosystem-wide processes and restoration of degraded ecological functions and ecosystem-wide processes. The *regulatory* provisions for critical areas shall protect existing ecological functions and ecosystem-wide processes.
- f) Promote human uses and values that are compatible with the other objectives of this section, such as public access and aesthetic values, provided they do not significantly adversely impact ecological functions.

Options: Several options, may be considered in updating the SMP:

- a) Keep the existing regulations.

Advantages include:

- i) consistency with other regulatory systems using DNR based classifications
- ii) consistency between shoreline and non-shoreline streams

Disadvantages of this approach are:

- i) The regulations are quite complex and would be even more complex when applied with shoreline overlays
- ii) They rely on a classification system that relates regulations to the presence of certain features, such vegetation or impervious surfaces which are not necessarily the primary conditions that determine ecological functions provided
- iii) The classification system does not apply the much more detailed information on shoreline ecological functions provided in the Shoreline Inventory/Characterization prepared for this update
- iv) The regulations do not incorporate decisions required to be made in the Shoreline Master Program update that balance the goals of:
 - Maintaining ecological productivity
 - Providing a priority for water related uses
 - Providing public access
- b) Integrate critical area regulations for aquatic species in the SMP in conjunction with the regulatory system outlined in (3) Shoreline Regulatory Options, above. For example, the setback and vegetation management provisions for specific reaches would provide the functions of buffers in the current code without an additional overlay. This would recognize both existing ecological functions, development patterns and city Comprehensive Plan goals, rather than rely on the current broad classification system.

Recommendation:

- a) Incorporate critical area regulations for “fish and wildlife conservation areas” in the SMP regulations as outline in (2) above.
- b) Adopt by reference other Critical Area regulations in the Development Code.

5. Mitigation of Cumulative Impacts

Existing Code:

Renton has no existing planning or code requirements that consider cumulative impacts. All impacts are assessed and mitigated on a case-by-case basis

SMA Guidelines: Provision for mitigation of cumulative impacts are contained in the following:

- a) WAC 173-26-186 *Governing principles of the guidelines*, provides a mandate in (8)(d) to evaluate and consider cumulative impacts of reasonably foreseeable future development on shoreline ecological functions and other shoreline functions fostered by the policy goals of the act. To ensure no net loss of ecological functions and protection of other shoreline functions and/or uses, master programs shall contain policies, programs, and regulations that

- address adverse cumulative impacts and
- fairly allocate the burden of addressing cumulative impacts among development opportunities.

Evaluation of such cumulative impacts should consider:

- i) Current circumstances affecting the shorelines and relevant natural processes;
 - ii) Reasonably foreseeable future development and use of the shoreline; and
 - iii) Beneficial effects of any established regulatory programs under other local, state, and federal laws.
- b) Local governments must incorporate in the SMP a process for periodically evaluating the cumulative effects of authorized development on shoreline conditions. This process could involve a joint effort by local governments, state resource agencies, affected Indian tribes, and other parties (WAC 173-26-191(2)(a)(iii)(3)(D))
- c) The principle that regulation of development shall achieve no net loss of ecological function requires that master program policies and regulations address the cumulative impacts on shoreline ecological functions that would result from future shoreline development and uses that are reasonably foreseeable from proposed master programs. For commonly occurring and planned development, policies and regulations should be designed without reliance on an individualized cumulative impacts analysis. Local government shall fairly allocate the burden of addressing cumulative impacts. (WAC 173-26-201(3)(d)(iii))
- d) For shorelines of statewide significance master program provisions shall establish development standards that ensure the long-term protection of ecological resources of statewide importance. Standards shall consider incremental and *cumulative* impacts of permitted development and include provisions to insure no net loss of shoreline ecosystems and ecosystem-wide processes. (WAC 173-26-251(3)(d)(i)) [Emphasis added]

Options: The following options are available to address cumulative impacts:

- a) Designing regulations to be more stringent to include mitigation for both individual and cumulative impacts;
- b) Provide a program of mitigation implemented by the city to address cumulative impacts. Such a program could identify the specific areas and actions where mitigating is most effective. Funding for mitigation could be
 - from general funds or
 - included in a mitigation fee system collected at the time permits are issued, or
 - could be implemented through other fees such as stormwater management fees.

Recommendation: Pursue all options outlined above for potential application in different circumstances.

6. Provisions for existing development

Existing Code:

The existing SMP does not have provisions for “non-conforming uses.” Such provisions were added in the 2005 revision in Ordinance 5136 and adopt by reference the non-conforming provisions of RMC 4-10-050 for nonconforming structures and RMC 4-10-060 for nonconforming uses. The provisions for nonconforming activities and structures within critical areas in 4-10-090 are not adopted.

The current code provisions restrict alterations to 50% of the value of the structure, unless the amount over fifty percent (50%) is used to make the building or structure more conforming, or is used to restore to a safe condition any portion of a building or structure declared unsafe by a proper authority. Alterations are not allowed to result in or increase any nonconforming condition.

The provisions of RMC 4-9-120 allows issuance of a Rebuild Approval Permit for existing structures that do not meeting the criteria above, but has no criteria that addresses SMA Guidelines regarding no net loss of ecological functions.

Neither of these provisions address changes to a property that might impact ecological functions, either individually or cumulatively.

SMP Guidelines

Provisions for nonconforming uses are contained in a separate WAC 173-27 that addresses the shoreline permit process and was not updated in 2003. The provisions for nonconforming uses apply only if the local jurisdiction has not adopted provisions.

Recommendation:

Add provisions to the RMC 4-9-120 that allows issuance of a Rebuild Approval Permit provisions in RMC 4-9-120 addressing criteria specific to shoreline ecological functions.

Add provisions to the alternation and expansion section specific to shoreline properties (and perhaps with separate provisions for single family development that would address ongoing impacts to shoreline functions and require changes on a sliding scale addressing such features as:

- Meeting standards for shoreline vegetation to avoid application of fertilizers and herbicides close to the water
- Meeting standards for shoreline vegetation to provide habitat functions such as shading and foodchain functions
- Meet current standards for bulkheads
- For uses other than single family, providing shoreline access